No. 14700

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

IDAHO EGG PRODUCERS, INC., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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AUTHORITIES CITED

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JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Section 151 *et seq.*),[1] for enforcement of its order (R. 77–81)[2] issued on January 6, 1955, against Idaho Egg Producers, Inc., following the usual proceedings under Section 10 of the Act. This Court has jurisdiction of the proceeding, the unfair labor practices having occurred at Pocatello, Idaho, within this judicial cir-

[1] The pertinent provisions of the Act are appended hereto (pp. 19–20, *infra*).

[2] References to the printed record are designated "R". References preceding a semicolon are to the Board's findings; references following a semicolon are to the supporting evidence.

cuit.[3] The Board's Decision and Order is reported at 111 NLRB No. 12.

STATEMENT OF THE CASE

I

The Board's findings of fact

Briefly, this case concerns respondent's refusal to bargain with the Union and its attempt to destroy the Union's majority status by interrogating its employees concerning their union activities, threatening its employees with loss of existing benefits, granting benefits to discourage union membership, and granting time off with pay so that the employees could withdraw from the Union. The Board found this conduct to be in violation of Section 8 (a) (1) and (5) of the Act. The subsidiary facts upon which these findings rest may be summarized as follows:

A. The employees authorize the Union to represent them

In September 1953, the Union[4] initiated an organizational campaign (R. 26; 94–95, 128–129). In order to keep their activity a secret, organizers Irma Herzinger, Ruthe Jensen and Donna Christenson, employees of respondent, canvassed other employees at their homes (R. 26; 297, 222, 194). Although Herzinger, Jensen and Christenson were able to reach many of the employees in this manner, as of Sep-

[3] Respondent, an Idaho corporation, is engaged in the marketing of eggs and poultry at five plants in the State of Idaho. In the course of these operations, respondent purchases and sells materials of substantial value across state lines. Respondent admits that it is engaged in commerce within the meaning of the Act, and thus no jurisdictional issue is presented (R. 25; 2, 6, 92–93).

[4] Teamsters, Chauffeurs and Helpers Union, Local 983, AFL.

tember 22 a majority had not signed with the Union (R. 26; 16–20). On the evening of September 22, Union Secretary-Treasurer Clarence Lott conducted a meeting to explain the Union's program and to obtain further signatures (R. 26; 94, 128). The meeting was attended by 18 or 19 employees (R. 26; 95, 122). With the additional cards signed during this meeting, a total of 18 out of respondent's 27 employees had signed cards specifically designating the Union as their collective bargaining representative (R. 51–52, 26; 16–21, 306, 270, 302, 173–174, 250–251, 336–337). Union Representative Lott explained that the next step would be to notify respondent that a majority of the employees had signed Union authorization cards, and if respondent would acknowledge this fact, negotiations would commence at once; otherwise, there would have to be an election (R. 26–27; 95–96, 130). Some concern was expressed by the employees lest the names of card signers be divulged to management, but Union Representative Lott assured them that the Union would not reveal any of their names (R. 27; 131). Lott said it would be necessary, however, for the cards to accompany a representation petition to the Board in order to demonstrate support of the Union by the employees (R. 27; 131, 95).

B. Respondent rejects the Union's request to bargain, and the Union files a representation petition with the Board

On September 23, the Union notified Plant Manager Cecil Slayden that a majority of the employees had signed Union cards and requested that respondent recognize the Union as their collective bargaining agent (R. 27; 8). Slayden replied by letter, refusing

to bargain with the Union on the ground that bargaining was not within his "jurisdiction," and referring the Union to respondent's Caldwell, Idaho, office, located approximately 200 miles from Pocatello (R. 28; 59–60, 11). On September 24, the Union filed a petition with the Board seeking an election to determine its status as bargaining representative (R. 28; 9–10).

C. Respondent engages in interference, restraint and coercion designed to destroy the Union majority

On the morning of September 23, William Hoffman, one of the employees who attended the Union meeting of the previous evening, gave Manager Slayden a full report of what transpired at the meeting (R. 30, 33; 363–364, 379, 204, 2223–224, 263).

Shortly thereafter, Slayden asked Employee Ruthe Jensen to come to his office and "have a talk" (R. 31; 397, 222, 411). On Jensen's arrival at the manager's office, Slayden said that he had heard from "other sources" that she was "one of the main ones in this Union" (R. 31; 222). The manager claimed that he also knew the names of all the employees who had signed Union cards (R. 31–32; 223, 412). When Jensen challenged this statement, the manager sent for Employee Hoffman to verify it (R. 32; 223). A few minutes later Hoffman came in and admitted, in Jensen's presence, that he had given the names of Union adherents to Slayden (*ibid*). The manager asked Jensen "What did you do it for? * * * What have I done wrong that you have gone and gotten the union?" (R. 32; 412, 232–233). Jensen replied that the em-

ployees would like to have Saturdays made a holiday (R. 32; 399, 224). Manager Slayden said that he thought this could be "worked out" (R. 32–33; 399). As far as other matters were concerned, Slayden suggested that the employees could "bargain with me, I am open minded on bargaining" (R. 31–32; 417, 411). At the same time Slayden warned that if the Union came into the plant the employees might lose their Christmas bonus (R. 32; 223, 398–399, 415). He also reminded Jensen that there already were plans in the plant safe for the installation of automatic egg candling machines and that respondent would go ahead with them if it became necessary (R. 32; 223, 415, 133, 102). When Jensen returned to her work station she related Slayden's remarks to the other employees (R. 33; 224, 293–294, 247), and the employees "then and there" began to talk of withdrawing from the Union (R. 33; 170, 245).

On September 24, Manager Slayden also asked Donna Christenson what [she] knew about the Union?" (R. 33–34; 194). Although a leader in the Union's drive to get members, Christenson disclaimed any knowledge of the organization other than "gossip" she had overheard from the other employees (R. 34; 194). But Slayden contradicted her and said that his "sources" had informed him that she was one of the Union's leaders (*ibid*). Slayden repeated to Christenson his warning to Jensen that if the Union became the bargaining representative Christmas bonuses would be eliminated (R. 34; 194–195). Later in the day,

Foreman Talbot also sought information about the Union from Christenson (R. 35–36; 198–199). Talbot pointed out that Manager Slayden knew the names of the Union adherents and warned that if the Union did come in, "It was going to be a lot harder for everyone" (R. 36; 199).

On Saturday morning, September 26, Manager Slayden appeared in the egg candling room where the female employees worked (R. 36–37; 210, 177). Slayden announced that the question of "staying in a union or getting out of a union," was a matter for the employees themselves to decide (R. 37; 217, 177–178), but he stated that "all the Union could do is cost [the employees] dues" and that they would be better off without it (R. 37; 178). Slayden added that he had decided to grant their request for Saturdays off, and repeated that respondent could install labor-saving machinery if it became necessary (R. 37; 179, 212–214, 178–179, 283–284, 388, 419). In closing, Slayden stated that he had never been a "union man," and still hoped that they "could work it out together without involving the Union" (R. 37; 225–226, 214–215, 391). After Slayden left, Carrie Monroe, one of the employees, said they were in "a lot of Dutch" and that Slayden could "fire the whole crew and get a new bunch in" (R. 386–387, 395–396).

Within an hour, Manager Slayden received word that considerable sentiment existed among the employees in favor of withdrawing from the Union (R. 37–38, 401). Slayden visited the egg candling area

a second time, and informed the girls that they could leave at once for the Union hall to withdraw their cards (R. 37–38; 401, 250). The manager added that the employees could use his automobile and that they would be paid until the noon closing hour (R. 38; 401, 226, 275, 295). A group of employees left immediately for the Union hall with the intention of withdrawing their own cards and then telephoning other employees as to the procedure to be followed (R. 38; 216, 268). However, the Union hall was closed and one of the employees telephoned word of this back to Manager Slayden (*ibid.*). The employees received pay until noon of September 26, although the last employee finished work by 11:00 A. M. (R. 39; 418–419, 190).

Thereafter respondent eliminated Saturday work, thus remedying the very condition which employee Jensen had stated to Manager Slayden as the primary reason for joining the Union (R. 39; 418–419, *supra*, p. 4).

D. Following the foregoing unlawful conduct, respondent consents to an election, but the Union withdraws its petition

On October 1, respondent agreed to allow a Board-conducted election among its employees (R. 29; 11–12). However, on October 29, the Union requested permission to withdraw its representation petition; and on November 2, the Board granted the permission (R. 29–30; 112). Shortly thereafter, the Union initiated the instant proceeding.

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II

The Board's conclusions and order

Upon the above facts and the entire record, the Board unanimously agreed with the Trial Examiner that respondent had interfered with, coerced and restrained its employees in violation of Section 8 (a) (1) of the Act. In particular, this finding was based on: (a) Manager Slayden's interrogation of employees Jensen and Christenson concerning the Union; (b) his statements to employees Jensen and Christenson that he knew the names of Union adherents and that they were leaders in the Union movement; (c) his repeated threats to install labor-saving equipment and take away the employees' Christmas bonus if the employees selected the Union; (d) his attempt to bargain directly with the employees; (e) Foreman Talbot's questioning of employee Christenson about the Union; (f) his warning to employee Christenson that he knew the names of Union adherents and that the Union would make it "a lot harder for everyone;" (g) the elimination of Saturday work to discourage Union activity; and (h) the grant of paid time off for the purpose of withdrawing from the Union (R. 46–48, 78).

The Board and the Trial Examiner further found that at the time of the Union's bargaining request, it represented an uncoerced majority of respondent's employees in an appropriate unit, and that respondent refused to bargain, not because of a good faith doubt of the Union's majority but because of a desire to undermine the Union by committing unfair labor practices (R. 51–57, 78). Accordingly, the Board and the

Trial Examiner concluded that respondent's refusal to bargain with the Union was in violation of Section 8 (a) (5) and (1) of the Act, and that respondent's unilateral fulfillment of its promise to eliminate Saturday work likewise violated Section 8 (a) (5) of the Act (*ibid.*).

The Board's order directs respondent to cease and desist from the unfair labor practices found, to bargain with the Union upon request, and to post appropriate notices (R. 78–80).

ARGUMENT

I

Substantial evidence on the record considered as a whole supports the Board's finding that respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act

The facts summarized above establish that respondent interrogated its employees concerning their union activities, threatened to withhold benefits and to install labor-saving equipment if the employees selected the Union to represent them, granted benefits designed to discourage union activity, and gave employees time off with pay for the purpose of withdrawing from the Union. That such conduct constitutes interference, restraint, and coercion violative of Section 8 (a) (1) is too well-settled to require discussion. See, e. g., *N. L. R. B.* v. *Radcliffe,* 211 F. 2d 309, 311–313 (C. A. 9), certiorari denied, 348 U. S. 833; *N. L. R. B.* v. *West Coast Casket Co.,* 205 F. 2d 902, 905 (C. A. 9); *N. L. R. B.* v. *Parma Water Lifter Co.,* 211 F. 2d 258,

262 (C. A. 9), certiorari denied, 348 U. S. 829; *N. L. R. B.* v. *Geigy Co.,* 211 F. 2d 553, 557 (C. A. 9), certiorari denied, 348 U. S. 821; *N. L. R. B.* v. *Shannon,* 208 F. 2d 545, 548 (C. A. 9); *N. L. R. B.* v. *Andrew Jergens Co.,* 175 F. 2d 130, 135–136 (C. A. 9), certiorari denied, 338 U. S. 827.

Respondent defended its statements with respect to the installation of labor-saving devices on the ground that long before the advent of the Union such automation was anticipated. Respondent also argued that Manager Slayden did not specifically state that he would discontinue Christmas bonuses but merely made the employees aware that any future bonus would depend on the Union contract which might be entered into (R. 46; 415). Even assuming this version of the facts to be correct, "it did not justify respondent in making the anticipated events the subjects of threats and allurements to force abandonment of the Union by the employees." *N. L. R. B.* v. *Parma Water Lifter Co.,* 211 F. 2d 258, 262 (C. A. 9).

Before the Board, respondent also urged that "while the employer may have been guilty of indiscretions and improper statements, they had no influence whatsoever on the employees." (Exceptions, p. 6.) Under settled authority, however, it is "not necessary to show duress but only interference, and it is not necessary that the interference shall be successful" (*Rapid Roller Co.* v. *N. L. R. B.,* 126 F. 2d 452, 457 (C. A. 7), certiorari denied, 317 U. S. 650). "The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the

free exercise of employee rights under the Act." *N. L. R. B.* v. *Illinois Tool Works*, 153 F. 2d 811, 814 (C. A. 7).[6] In any event, respondent's contention that the employees' freedom was not adversely affected is rebutted by the mass retreat from the Union which actually took place.[7] It was therefore reasonable for the Board to attribute the employees' change of heart to respondent and to infer that the above detailed "acts of interference, restraint and coercion, constituted an attempt to undermine and destroy the Union's position as majority bargaining agent" (R. 61).

II

Respondent's refusal to bargain with the Union violated Section 8 (a) (5) and (1) of the Act

At the time of the Union's bargaining request in this case, it had been authorized by 18 of respondent's

[6] Accord: *Radio Officers' Union* v. *N. L. R. B.*, 347 U. S. 17; *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584, 588; *N. L. R. B.* v. *Donnelly Garment Co.*, 330 U. S. 219, 231; cf. *N. L. R. B.* v. *Walt Disney Productions*, 146 F. 2d 44, 49 (C. A. 9), certiorari denied, 324 U. S. 877; *N. L. R. B.* v. *Grower-Shipper Vegetable Ass'n*, 122 F. 2d 368, 376 (C. A. 9).

[7] That the enfeeblement of the Union was attributable to respondent's "indiscretions" is demonstrated by the testimony of employee Pharris (R. 217):

Q. (By respondent's counsel) Did you hear him tell the group down there that the question of joining a union or staying in a union or getting out of a union was entirely up to you people?

A. Yes, he did say that. But the girls were afraid to stay in the union, part of the girls were going to drop out because they were scared. Well, then the other girls figured they might as well because if part of them were going to drop out they were surely going to lose, the union wasn't going to get in, so they were scared, if they left their names in, they were going to get fired, so they just wanted to withdraw their names, too.

27 employees to act as their bargaining representative.[8] Respondent, however, countered the Union's bargaining request with the campaign of interference, restraint, and coercion described above. After ascertaining that its unlawful tactics had apparently succeeded in destroying the Union's majority, respondent consented to an election, but the election did not take place because the Union with the consent of the Board withdrew its representation petition. This Court has repeatedly held that under these circumstances the employer whose unlawful conduct prevented the holding of a fair election must bargain with the Union if it represented a majority at the time of its initial bargaining request. *N. L. R. B.* v. *Trimfit,* 211 F. 2d 206, 209–210; *N. L. R. B.* v. *Geigy,* 211 F. 2d 553, 556, certiorari denied, 348 U. S. 821; *Motorola, Inc.* v. *N. L. R. B.,* 199 F. 2d 82, certiorari denied, 344 U. S. 913; *N. L. R. B.* v. *W. T. Grant Co.,* 199 F. 2d 711, certiorari denied, 344 U. S. 928; *N. L. R. B.* v. *Howell Chevrolet Co.,* 204 F. 2d 79, 85–86,

[8] The cards of 16 employees were submitted in evidence (R. 51; 16–21). In addition it is undisputed that two other cards, those of Carrie Monroe and Nina Cordell, were signed (R. 51–52; 304, 270–272, 173, 251, 337). Respondent claims that Velma Armstrong's card is void because she is now an office employee excluded from the appropriate unit (R. 49; 74). Actually Armstrong's signature is unimportant because even without it the Union would still have a clear majority. However, it is apparent Armstrong was assigned to candling eggs in September when she signed the card (R. 49; 19). Indeed, Manager Slayden admitted that Armstrong "candled right up until about the first of October" (R. 50; 404). Accordingly, although Armstrong may not now be within the bargaining unit, the Board was correct in counting her signature for the purposes of determining the Union's majority at the time respondent refused to bargain (R. 50–51).

affirmed 346 U. S. 482; *N. L. R. B.* v. *Knickerbocker Plastic Co.,* 218 F. 2d 917, 921–922.[9]

Respondent contends, however, that notwithstanding the Union's possession of authorization cards from 18 of the 27 employees in the bargaining unit, it did not represent an uncoerced majority, having procured the cards by threats and misrepresentations. We note in passing that had respondent really doubted that the employees actually desired the Union to represent them, respondent by refraining from its own unlawful conduct could have had the issue settled in a secret ballot election. Having foreclosed this means of determining the Union's status, respondent is hardly in a position to challenge the authorization cards, the sole remaining manner of testing the Union's claim. But in any event, as we show below, substantial evidence supports the Board's finding that the cards were not unlawfully obtained.

Respondent in its Exceptions identified five employees—Zina Jensen, Going, Godfrey, Panter, and Ellsworth—as having been fraudulently induced to sign the authorization cards (R. 75). As the trial examiner observed (R. 52), Zina Jensen's card was not included in the group of 18 relied on by the General Counsel as establishing the Union's majority. Since the Union had 18 out of 27, and since only four of the 18 are directly challenged by respondent, it follows that the Union would have a majority of 14 out of 27 even if all the challenges were well founded.

[9] The unilateral change of working conditions was, of course, a further refusal to bargain. See *Fry Roofing Co.* v. *N. L. R. B.*, 216 F. 2d 273, 276 (C. A. 9), and cases there cited.

Analysis of the record, moreover, discloses ample evidence to support the finding of the trial examiner and the Board that the cards were lawfully obtained.

Respondent claimed that Zina Jensen was coerced into signing a card. The fact that Jensen revoked her bargaining authorization five minutes after she originally signed it of itself, refutes the contention that she felt coerced. Moreover, the record shows that Herzinger, whose testimony was expressly credited and who obtained Jensen's signature, denied coercing Jensen; and that Jensen herself denied being threatened and admitted signing the card of her "own free will" (R. 53; 329, 322, 421).

The claim that the Union secured Russell Going's membership by threatening him with a fine if he refused to join likewise fails to withstand analysis. Going testified that he signed a card when requested to do so by several female employees (R. 54; 347). He also testified that employee William Hoffman (management's source of information about the Union, p. 4, *supra*), who had not solicited his signature, said Going might be fined for failing to join, but that he (Going) "never did get the straight of it" (R. 54, 351). These facts support the finding of the trial examiner and the Board that "Going's signature was not procured by those who solicited it on the basis of a threatened fine" (R. 54).

Respondent points to some evidence that Ora Panter who joined the Union on September 22, 1953, expressed regret for that action a day later (R. 56). The record shows, however, that Panter, although advised on September 23 that she could stay in the

Union or withdraw if she so chose, did not withdraw until September 26, after the commission of the unfair labor practices described at pp. 3–7, *supra* (R. 56, 305–306, 311). Under these circumstances the Board and the trial examiner properly found that Panter's card was properly counted as part of the Union's majority (R. 56). See *N. L. R. B.* v. *Geigy Co.,* 211 F. 2d 553, 556 (C. A. 9), and the other cases cited *supra,* p. 12.

Equally without merit is respondent's contention that each employee was falsely told that he was the last one to be signed into the Union (R. 75). Bernard Godfrey testified "I won't say they told me, but they led me to understand that most of the employees had signed these slips" (R. 55; 378). However, in view of Godfrey's unwillingness to testify that anyone actually made such a statement to him, and the fact that Godfrey never attempted to withdraw his card, the Board found no valid basis for refusing to count his card (R. 55–56; 378, 381). The only other testimony having any possible relevance to the above contention of petitioner is that of Russell Going who testified that at the time he signed he was told that the "biggest percentage" of his fellow employees "either had signed it or * * * they *would* sign it" (emphasis added) (R. 54; 347). But respondent's concession (R. 75) that a majority did eventually sign disposes of any argument that this was a false statement.

Finally respondent contended that the employees were told that their signatures were merely being obtained for the purpose of having an election and that they were not authorizing the Union to bargain

for them (R. 75). In support of this respondent directed the Board's attention to the testimony of Gene Ellsworth that he understood the membership card "was for the employees to have a meeting with the Union to discuss the benefits, if any, with the union" (R. 57; 355). As the trial examiner observed, this is not "inconsistent with the purposes of union representation and * * * Ellsworth, who is not illiterate, intended to do precisely what the card indicated on its face, namely, designate the union as bargaining representative" (R. 57). Respondent relies on the testimony of Janet Stoddard, who stated: "Well, I heard it two different ways. I heard it once that when the majority signed those slips we was automatically in the union and then another time I heard that it had to go to a vote" (R. 259–260). This is entirely consistent, however, with Union Representative Lott's explanation that if respondent acknowledged the Union's majority, bargaining would commence at once, but if respondent refused, the Union would have to file for an election and forward the authorization cards to the Board (*supra,* p. 3). Or, as Carrie Monroe testified, "the way I understood it" by signing "we was almost the same as in the Union" (R. 270).

In sum, absent any specific showing that false or coercive statements were made by the Union, the Board had justification for concluding, as did the court in *Continental Oil Co.* v. *N. L. R. B.,* 113 F. 2d 473, 480 (C. A. 10), that "since the instrument indicates clearly a purpose to designate the union as the representative of the employees for the purposes of collec-

tive bargaining," the employees actually intended it to have that effect (R. 57).[10]

CONCLUSION

For the reasons stated, it is respectfully submitted that the Board's findings are supported by substantial evidence on the record considered as a whole, that the Board's order is valid and proper, and that a decree should issue enforcing the order in full.[11]

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[10] The language of the union authorization cards is substantially the same as in *N. L. R. B.* v. *Geigy Co.*, 211 F. 2d 553, 556 (C. A. 9), where an identical contention was made. Each card contained the statement "The undersigned hereby designates International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983 as his bargaining agent for the purpose of collective bargaining regarding wages, union shops, and conditions of employment" (R. 16–17).

[11] It is immaterial that the Union in fact lost its majority after respondent's unlawful campaign. That loss of majority is properly attributable to respondent's unfair labor practices, and the order to bargain is thus an appropriate remedy for the unfair labor practices. *N. L. R. B.* v. *Geigy Co.*, 211 F. 2d 553, 557–558 (C. A. 9) and cases there cited. Likewise of no consequence is the fact that on April 5, 1955, respondent filed a petition, not a part of this record, to have the Board conduct an election among its employees. This petition, of course, was properly dismissed pursuant to the settled Board policy of not entertaining representation petitions during the pendency of unremedied unfair labor practices. *N. L. R. B.* v. *Trimfit*, 211 F. 2d 206, 209, n. 2 (C. A. 9); *N. L. R. B.* v. *Hamilton*, 220 F. 2d 492, 495 (C. A. 10).

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 151, *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

Sec. 10. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring

such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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